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Our File No. 20,965

Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

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PROVO CITY, a municipal corporation, :

Plaintiff, :

vs. :

**COMPLAINT**

ROBERT L. MORGAN, as state engineer :  
of the State of Utah, BUREAU OF :  
RECLAMATION OF THE :  
DEPARTMENT OF THE INTERIOR OF :  
THE UNITED STATES OF AMERICA, :  
SALT LAKE COUNTY WATER :  
CONSERVANCY DISTRICT, PROVO :  
RIVER WATER USERS ASSOCIATION, :  
PROVO RESERVOIR WATER USERS :  
CO., KENNECOTT CORPORATION, :  
DRAPER IRRIGATION COMPANY, :  
NORTH JORDAN IRRIGATION :  
COMPANY, PACIFICORP, GENEVA :  
STEEL, EAST JORDAN IRRIGATION :  
COMPANY, and SALT LAKE CITY :  
CORPORATION, :

Case No.

Defendant.

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### **PRELIMINARY STATEMENT**

1. This is an action brought under Utah Code Ann. § 78-33-1 seeking a declaratory judgment determining the interpretation of sections 3, 4, 116, and 124 of the decree issued by the court in Provo Reservoir Company v. Provo City, Civil No. 2888, Fourth District Court, Utah County, May 21, 1921 (hereinafter the "Morse Decree"), and seeking an injunction to enjoin the State Engineer from adjudicating water rights under the Morse Decree. Plaintiff further seeks attorney fees and costs under Utah Code Ann. § 78-33-10.

### **JURISDICTION AND VENUE**

2. Jurisdiction is conferred by Utah Code Ann. § 78-33-1. Declaratory relief is authorized by Rule 57 of the Utah Rules of Civil Procedure, and injunctive relief is authorized by Rule 65 of the Utah Rules of Civil Procedure.

3. Venue is proper in the Fourth Judicial District Court of Utah County, State of Utah, because the stream or water source or some part of it is located in Utah County.

### **PARTIES**

4. Provo City Corporation is the applicant under Change Application No. 55-11001 (a16085).

5. Robert L. Morgan is the State Engineer and acts an officer and agent of the State of Utah.

6. All other parties are protestants of Change Application No. 55-11001 (a16085).

### COMMON FACTS

7. Plaintiff is the successor in interest to water rights under the Morse Decree, Provo Reservoir Company v. Provo City, Civil No. 2888, Fourth District Court, Utah County, May 21, 1921. These water rights arise under the Morse Decree as defined by sections 4(a), 4(b), 4(c) and 4(d).

8. Plaintiff filed Change Application No. 55-11001 (a16085) for said water rights, which was received by the State Engineer on March 22, 1991.

9. The proposed changes under Change Application No. 55-11001 (a16085) would add additional points of diversion, provide for water storage in the Jordanelle Reservoir under Provo City's contract with the Central Utah Water Conservancy District, utilize municipal use along with the existing uses under the Morse Decree from January 1st through December 31st, and effect an exchange of water for South Fork Springs water.

10. Subsequent to the plaintiff filing Change Application No. 55-11001 (a16085), the State Engineer received protests from each of the other above-named defendants. Several of the protestants have requested a hearing pursuant to Division of Water Right's Rule 625-6-7b.

11. Among the objections stated by the protestants is the allegation that sections 116 and 124 of the Morse Decree prohibit a year-round municipal use and said sections would be violated by the proposed changes under the Change Application. They allege particularly

that there is a current irrigation season right that would be enlarged if plaintiff were allowed to use its water on a year-round municipal use basis.

12. Plaintiff has not, as of this date, received notice that a hearing will be held; however, it is expected that a hearing will be scheduled by the State Engineer in the immediate future.

13. The proper hearing procedure is provided for in Utah Code Ann. § 63-46b-1 et. seq..

14. The pertinent sections of the Morse Decree are sections that are undefined by statute and contain particular terms that are ambiguous.

15. The pertinent sections of the Morse Decree are also open to differing interpretations.

16. The State Engineer is not empowered to adjudicate water rights, but is rather empowered to fulfill an administrative role, under Utah Code Ann. § 73-2-1 et. seq..

17. A hearing held before the State Engineer on these particular change applications would constitute an adjudication by the State Engineer if these particular sections of the Morse Decree and definitions are not determined by declaratory judgment prior to the hearing. Once these sections are interpreted and the definitions determined, the State Engineer will be able to approve or reject the applications accordingly, pursuant to his duties which are administrative in nature and purpose.

**FIRST CAUSE OF ACTION**  
(Declaratory Relief)

18. Plaintiff realleges herein the previous allegations of this Complaint.

19. Plaintiff is entitled to a declaration that the definition of municipal use as used in section 3 and throughout the Morse Decree includes all purposes and uses benefitting a municipality, not limited by type of use or time of use.

20. Plaintiff is entitled to a declaration that the water rights under section 4(c), when read together with section 4(d) and all of the provisions of the Morse Decree, are not limited to the irrigation season only.

21. Plaintiff is entitled to a declaration that sections 3, 4, 116, 124 when read together with all other provisions of the Morse Decree give the plaintiff the right to use all of the water awarded under the Morse Decree for municipal purposes without limitation to type or time of use.

22. Plaintiff is entitled to a declaration that paragraph 124, when read together with all other provisions of the Morse Decree, does not limit the use of the plaintiff's water rights to irrigation season only.

23. Plaintiff is entitled to a declaration that paragraph 116 of the Morse Decree, when read in connection with all of the provisions of the Morse Decree, does not prohibit the plaintiff from changing the place of use of the plaintiff's water rights.

24. Utah Code Ann. § 78-33-10 intends that "costs" as used in said provision includes attorney fees.

**SECOND CAUSE OF ACTION**  
(Injunctive Relief)

25. Plaintiff realleges herein the previous allegations of this Complaint.

26. Plaintiff alleges that if the State Engineer is allowed to render a decision on the above change applications prior to a declaratory judgment interpreting the terms of the Morse Decree, the decision would constitute an adjudication of the water rights, and the plaintiff will be caused permanent and irreparable harm.

27. Plaintiff is entitled to an injunction, barring the State Engineer from taking further action on these change applications until a declaratory judgment has been given.

WHEREFORE, plaintiff prays for judgment as follows:

1. For declaratory judgment as alleged above.
2. For injunctive relief as alleged above.
3. For costs and attorney fees.

DATED this 14<sup>th</sup> November day of ~~October~~, 1991.

Danielle Ferron

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HOWARD, LEWIS & PETERSEN  
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